

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WINDY CITY INNOVATIONS, LLC,)
a Delaware Company) Civil Action No. 04-4240
Plaintiff,)
v.) Judge Samuel Der-Yeghiayan
AMERICA ONLINE, INC.,)
a Delaware Corporation)
Defendant.)

**ORDER GRANTING THE PARTIES JOINT MOTION PURSUANT TO
RULE 60(b) FOR VACATUR OF CERTAIN PRIOR ORDERS AND JUDGMENTS**

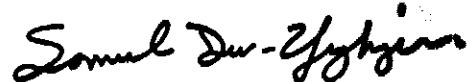
This cause comes on for hearing with respect to the parties JOINT MOTION PURSUANT TO RULE 60(b) FOR VACATUR OF CERTAIN PRIOR ORDERS AND JUDGMENTS. Specifically, the parties request that the Court vacate its July 29, 2005 Order and Opinion on claim construction (Docket Nos. 149 and 150); its December 8, 2005 summary judgment order and opinion (Docket Nos. 228 and 229); and its May 3, 2006 judgment (Docket No. 252) based on those prior orders. The parties have advised the Court that they have reached an agreement that would finally resolve this dispute without any further action needed by this Court or the United States Court of Appeals for the Federal Circuit if the motion to vacate is granted.

Pursuant to the February 15, 2007 Order of the Federal Circuit, the case has been remanded to this Court on a limited basis so that the Court can consider the parties' joint motion to vacate. The Court has the discretion to determine whether to vacate the prior orders and judgments pursuant to F.R.C.P. 60(b). *See U.S. Bancorp Mortgage Co. v. Bonner Mall P'Ship*,

513 U.S. 18 (1994). Pursuant to the Federal Circuit's Order, if this Court intends to grant the motion, it should so inform the parties and the parties may then promptly move to remand the case in its entirety.

Having considered the matter, the Court concludes that the vacatur requested by the parties is appropriate under F.R.C.P. 60(b). The vacatur would conserve judicial resources, both at the Federal Circuit and district court level, and would conserve the resources of the parties because the matter would be fully resolved without the necessity of any further action on the part of the parties or the court. Accordingly, pursuant to the Federal Circuit's Order, the Court hereby indicates that it is willing to GRANT a joint motion by the parties for vacatur and dismissal with prejudice pursuant to F.R.C.P. 60(b) and will in fact enter an Order vacating the prior orders and dismissing this case with prejudice once this case has been remanded in its entirety and the joint motion filed by the parties.

ENTERED:
By the Court:



Date: 3-12-07

Judge Samuel Der-Yeghiyan